East Sussex Healthcare
NHS Trust

Eastbourne District General Hospital
Kings Drive
Eastbourne
East Sussex
BN21 2UD

Tel: 0300 131 4500
Website: www.esht.nhs.uk

FOI REF: 25/567

28th August 2025

FREEDOM OF INFORMATION ACT

I am responding to your request for information under the Freedom of Information Act. The answers to your specific questions are as follows:

1. **Do you have a policy (or policies) which outlines the responsibilities of health and care professionals and the Trust towards a patient who has an Advance Decision to Refuse Treatment (ADRT) or Lasting Power of Attorney (LPA) for Health and Welfare?**

   If yes, please share a copy with us in any available format.

   Please see the attached policy - '00483_P' and note the following:

   Names of staff that no longer work within the Trust, have been redacted from the policy. I can confirm that we hold this information, but it is exempt under section 40(2) of the Freedom of Information Act 2000 – Personal Information of third parties. This is because disclosure of this information would breach the principles of the Data Protection Act.

   This is an absolute exemption and there is, therefore, no requirement to consider the public interest.

2. **In the event that a patient or family member, or someone using the Trust's services has a concern about the implementation of an Advance Decision to Refuse Treatment (ADRT) or a Lasting Power of Attorney (LPA) for Health and Welfare, does the Trust have a documented process or course of action that would be provided to the person to allow them to resolve their concerns?**

   If yes, please share a copy with us.

   Please refer to section 5.15.3 in the attached policy.

Cont…/

3. Do you have a named individual who is responsible for overseeing the Trust's compliance with the Mental Capacity Act 2005?

If yes, please share their contact details.

The Trust's Patient Safety Manager is responsible for overseeing the Trust's compliance with the Mental Capacity Act 2005.

However, according to our Freedom of Information Policy we only release the names of staff on Grade 8a and above. The post of Patient Safety Manager is below a Grade 8a and therefore the details requested cannot be provided.

If I can be of any further assistance, please do not hesitate to contact me.

Should you be dissatisfied with the Trust's response to your request, you have the right to request an internal review. Please write to the Freedom of Information Department (esh-tr.foi@nhs.net), quoting the above reference, within 40 working days. The Trust is not obliged to accept an internal review after this date.

Should you still be dissatisfied with your FOI request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Telephone: 0303 123 1113

Yours sincerely

Freedom of Information Department
esh-tr.foi@nhs.net

East Sussex Healthcare NHS Trust

Policy for Advance Decisions

Document ID:	483
Version:	V2
Ratified by:	Clinical Documentation and Policy Ratification Group
Date ratified:	October 2023
Name of author and title:	Dr Simon Walton, Anaesthetics Consultant
Date originally written:	June 2013
Date current version was completed:	October 2023
Name of responsible committee/individual:	Company Secretary
Date issued:	19 October 2023
Review date:	October 2026
Target audience:	All staff
Compliance with CQC outcome:	Safe and Well Led domains
Compliance with NHSLA/CNST:	N/A
Compliance with any other external requirements (e.g. Information Governance):	Mental Capacity Act
Associated Documents:	Policy and Procedure for Consent Claims and Legal Services Policy and Procedure Policy for the Management of Resuscitation Guidance for Staff on the Implementation of the Mental Capacity Act (MCA)

Version Control Table

Version number and issue number	Date	Author	Reason for Change	Description of Changes Made
(Advance Directives & Living Wills) 2004033 V1	March 2004	Legal Dept		
(Advance Directives & Living Wills) V1 2005273	December 2005	Legal Dept		
V3 2008159	August 2008	Simon Walton & Legal Dept		
V3 2010181	August 2010	[redacted]		
V3 2011111	March 2011			
V1.0 2013158	June 2013	Dr Simon Walton	Review date	New format; minor changes to accountabilities and responsibilities, Minor Change Approval given by Chair of Consent and Clinical Ethics Group
V1.0 2013158	August 2016		Review	None – still relevant as drafted
V1.0	March 2019	[redacted] Dr Simon Walton	Review	None – still relevant as drafted
V2	October 2023	Simon Walton	3-year review	No changes to content – format and new EIA form

Consultation Table

This document has been developed in consultation with the groups and/or individuals in this table:

Name of Individual	Title	Date
[redacted]	Discharge Coordinator	July 13
[redacted]	Legal Services Officer	July 13
Dr Simon Walton	Chair of Consent and Clinical Ethics Group	March 2019
Dr Simon Walton	Chair of Consent	October 2023

This information may be made available in alternative languages and formats, such as large print, upon request. Please contact the document author to discuss

Table of Contents

1. Introduction

This policy has been produced to assist all staff within the Trust to understand what an advance decision is and how to care appropriately for patients who have made one.

2. Purpose

2.1. Rationale

In 1995 the British Medical Association published a Code of Practice, which provides advice to health professionals in relation to advance statements about medical treatment made by patients. In 1999 the General Medical Council issued the legal position on advance directives[2].

Since that time the Mental Capacity Act (MCA) has come into force (2007) and there is now clear advice for health professionals, which is summarised in this guidance. Whilst living wills and advance decisions were respected by common law, the introduction of the MCA has given them a statutory footing.

2.2. Principles

The Trust recognises that it is good practice to allow patients the opportunity to plan for their future care if they so wish, but it does not actively encourage patients to make advance decisions (sometimes previously referred to as advance directives or living wills). If a patient requests information regarding the drawing up of an advance decision, please refer them to the organisations in section 9.2 and/or the legal department.

For patients for whom treatment is planned (i.e. elective surgery and procedures) the Trust recognises that it may be advisable to ask patients in advance whether they have made an advance decision. If they have, then the necessary steps can be taken (as outlined later in this guidance) to ensure that all health professionals are aware of its existence and care can be planned appropriately.

This guidance makes reference to the Mental Capacity Act Code of Practice (2005) and we would recommend that all staff are aware of this document and how to refer to it, if need be.

Advance decisions can refuse any kind of treatment, whether for a physical or mental disorder. But generally an advance decision to refuse treatment for mental disorder can be overruled if the person is detained in hospital under the Mental Health Act 1983, when treatment can be given compulsorily under Part 4 of that Act. Advance decisions to refuse treatment for other illnesses or conditions are not affected by the fact that the person is detained in hospital under the Mental Health Act.

2.3. Scope

This policy has been designed specifically for nursing, midwifery and medical staff, who have the most direct patient contact. However, we would recommend that all staff within the Trust familiarise themselves with the basic principles of advance decisions.

3. Definitions

Advance Decision

This is a document indicating the specific wishes of that person with regard to treatment

Advance Decision to Refuse Life-Sustaining Treatment

This is a specific form of advance directive. It must be in writing and fulfil various other requirements

Best Interests

Any decision made, or anything done for a person who lacks capacity to make specific decisions, must be in the patient's best interests. There are standard minimum steps to check. Please refer to MCA 2005.

Capacity

Adults (i.e. those aged 18 and over) and minors (aged sixteen and above) are deemed to have capacity to consent unless the contrary is shown. Minors are NOT however able to make a refusal of treatment. There is a specific mental capacity test which can be applied to determine whether a patient has or lacks capacity

Common Law

The law in England and Wales is divided into two parts- statute law and common law. The concept of common law is a set of principles which are applied equally across the country and sets out law not covered by Acts of Parliament

Consent

Nobody is able to consent on behalf of an adult UNLESS there is a valid and registered LPA and the patient lacks capacity. In the absence of capacity it is lawful to give treatment that is in the patient's best interests

Court of Protection

This office deals with registering LPA's. It has jurisdiction covering health, welfare and finance and property decisions. See www.publicguardian.gov.uk for further information

Decision Maker

This is the person who takes the action and is responsible for making the given decision which must be appropriate to the level of intervention, [see table p.10 in the Guidance for Staff on the Implementation of the Mental Capacity Act (MCA)] and take into account all the relevant background information available; verbal and written, including views of significant others including LPAs or appointed deputies [see Appendix A of the Guidance for Staff on the Implementation of the Mental Capacity Act (MCA)] and any Advanced Decision

- **Decision Maker for Simple decisions -** e.g. day to day decisions about what to wear, what to eat, where to go during the day can in the hospital situation be made by **any healthcare worker** who will take into account input from the patient and relevant background information and note the decision made in the patients care records.
- **Decision Maker for Significant decisions** e.g. longer term decisions involving care plans, arranging and reviewing packages of care, finance will be made by the relevant professional taking the action, using all the information available including that from

significant others/LPA and or any advanced decision and who will record the decision on the agreed documentation. If there is no appropriate relative or LPA then the decision maker **must** refer the case to an IMCA

- **Decision Maker for Complex, high risk or contentious decisions** – will be made by the relevant professional taking the action, using a multi-disciplinary approach and consulting relevant others family/friends, who will record the decision on the agreed documentation and refer to an IMCA if there is no appropriate other (as above).
- **Decision Maker for Specific Treatment/ surgery requiring formal written consent** – will be the senior clinician in charge of the care of that patient using a multi-disciplinary approach and consulting relevant others family/friends, and who will record the decision on the agreed documentation and refer to an IMCA if there is no appropriate other (as above).
- **Decision Maker in the EMERGENCY SITUATION** – the decision maker in an emergency situation (where delaying a decision would be detrimental to a patient's health) will have to make the best decision possible at the time made on the evidence available – they will not have to wait for an LPA, advanced decision or IMCA to be found however all the details regarding that decision must be recorded by the decision maker (or on his/her direction as soon as it can safely be done

DNAR

This is an order written in medical and nursing notes that states that in the event of a cardiac or respiratory arrest no basic or advanced cardiopulmonary resuscitation will be attempted, allowing the patient to die.

IMCA

This is an independent mental health care advocate. For patients who do not have a next of kin or any other family/friend and they lack capacity, an IMCA should be contacted to represent the patient. Please refer to the mental capacity act for more information on their roles and responsibilities.
www.dh.gov/uk/mentalcapacityact

Lasting Power of Attorney

Came into force in 2007. Specific rights can be assigned to people by the 'donor' including healthcare rights

4. Accountabilities and Responsibilities

4.1. The Admitting Practitioner

Has responsibility for trying to ascertain whether there is any relevant documentation and/or people i.e. Lasting Power of Attorney (LPA), Advanced Decision etc.

4.2. The Senior Practitioner on Duty

Where there is any doubt regarding capacity, has responsibility for ensuring that measures are taken to obtain LPA, Advanced Decision etc.

4.3. The Decision Maker

Has a responsibility for ensuring appropriate people/documents are consulted prior to a decision and that all steps are recorded following any decision being made. (See table p.10 and Definitions for more information on the Decision Maker)

5. Procedures and Actions to Follow

5.1. Advance Decisions

An advance decision enables anyone aged 18 or over, while still capable, to specify their wishes for care and medical treatment for a time in the future where they may lack the capacity to consent to or refuse that treatment. These were often known in the past as 'living wills' or 'advance directives'.

There are no particular requirements or formalities about the format of an advance decision UNLESS it deals with refusals of life sustaining treatment (see section 5.2).

It can be written or verbal. There is no set form for written advanced decisions because contents will vary depending on a person's wishes and situation. Also there is no set format for verbal advance decisions.

5.2. Advance Decisions that refuse Life Sustaining Treatment (Legal Requirements)

However the Mental Capacity Act imposes some particular legal requirements that people must follow when making an advance decision that *refuses life sustaining treatment*.

These are:

- It must be in writing. If the person is unable to write, someone else can write it down for them (a healthcare professional can record it in the patient's notes).
- It must be signed by the maker. If they are unable to sign, they can direct someone to sign on their behalf in their presence.
- The maker must sign in the presence of a witness to the signature. This witness must also sign the document. If the maker is unable to sign, the witness must sign to indicate they have witnessed the nominated person signing the document in front and on behalf of the person making the advance decision.
- The role of the witness is to witness the person's signature; it is not to certify that the person has the capacity to make the advance decision.
- There is no legal requirement for the witness to be independent from the maker of the advance decision.
- The advance decision must include a clear, specific written statement from the maker that the advance decision is to apply to the specified treatment, even if their life is at risk.
- If this statement is made at a different time or in a separate document to the original advance decision (which did not cover life sustaining treatment) then this must also be signed and witnessed.
- Section 4(10) of the Mental Capacity Act states that life-sustaining treatment is treatment which a healthcare professional who is providing care to the person regards as necessary to sustain life.
- An advance decision can refuse artificial nutrition and hydration.

It is important to remember that if the patient has capacity, they can refuse treatment or change their decisions and accept treatment. Advance decisions are obviously therefore not applicable.

5.3. Verbal Advance Decisions

Wherever possible, healthcare professionals should record any verbal advance decision to refuse treatment in a person's healthcare record. This record should include:

- A note that the decision should apply if the person lacks capacity to make treatment decisions in the future.
- A clear note of the decision, the treatment to be refused and the circumstances under which the decision will apply.
- Details of someone who was present when the oral advance decision was recorded and the role in which they were present (for example, healthcare professional, family and whether that person simply heard the decision, took part in the decision or was just aware that it exists.
- The implications and consequences of refusing such treatment.

5.4. Scope of Advance Decisions

Whatever wishes people express while competent should be given serious consideration. People cannot however authorise or refuse unlawful procedures, such as euthanasia. Additionally, the courts have made it clear that no advance decision prevents the giving of basic care (including shelter, warmth, pain relief, hygiene and offering food and water by mouth).

For the purposes of this policy, any document which a patient has written which directs clinicians as to the care and treatment which they wish to receive should be regarded as an advance decision. It is usually a formal written document in which a person states what they want to happen to them if they become ill and cannot communicate their wishes about treatment.

Patients do not have the right to insist on a specific treatment being given to them if healthcare professionals consider it to be clinically unnecessary, futile or inappropriate.

Advance decisions are not just restricted to care in hospital, but may also cover care at home, in a nursing home or a hospice and treatment provided in transit to hospital.

5.5. Capacity

An advance decision is *only* invoked when a patient lacks the capacity to consent to treatment

Different staff will be involved at different times in assessing someone's capacity, dependent on the treatment/care that they are proposing at that particular time.

5.6. Assessing Capacity

To determine if a person lacks capacity the Mental Capacity Act sets out a two stage test of capacity:

Stage 1: Does the person have an impairment of, or a disturbance in the functioning of their mind or brain?

Examples of impairment include conditions associated with some forms of mental illness, dementia, significant learning difficulties, brain damage, physical or medical conditions that cause confusion, drowsiness or loss of consciousness, delirium and the symptoms of alcohol or drug use.

Stage 2: Does the impairment or disturbance mean that the person is unable to make a specific decision?

A person is unable to make a decision if they cannot:

- Understand information about the decision to be made including the consequences of making such a decision.
- Retain the information for long enough to make the decision
- Use or weigh that information as part of the decision-making process
- Communicate their decision by any means

Remember that the fact a person agrees with you or assents to what is proposed does not necessarily mean that they have the capacity to make that decision.

When assessing a patient's capacity the steps indicated above must be clearly documented in the patient's medical notes.

For more detailed advice regarding capacity, please refer to Mental Capacity Act Code of Practice (2005) (Chapter 4) and the ESHT Guidance For Staff on the Implementation of the Mental Capacity Act (MCA).

5.7. Children

It is important to remember that children are only able to consent to treatment, they are not able to refuse any treatment[5]. Anyone under the age of 18 is not able to make an advance decision. They may however have clear views and wishes about their treatment and these should of course, as with any patient, be taken into consideration.

5.8. Lasting Powers of Attorney (LPA)

A power of attorney is a legal document that allows a person to delegate authority to someone else, if they become at any time incapable of making these decisions themselves. Historically there have been financial powers of attorney. This has now extended to include health and social care.

The mental capacity act replaces what was known as the Enduring Powers of Attorney Act (1985). It also increases the range of different types of decisions that people can authorise others to make on their behalf.

Someone delegated as an LPA can include healthcare decisions such as consent. This *only* applies if the person for whom treatment is proposed, lacks capacity.

The 'donor' (person appointing the LPA) can choose more than one, if they so wish. There are strict procedures which people must follow in appointing an LPA and these have to be registered with the Office of the Public Guardian. If you have any doubts about the validity of an LPA, checks can be made directly with the Office of the Public Guardian (see section 9.2 below for details of how to contact). During office hours the

legal department should be contacted, who will undertake these checks for you. Out of hours the duty matron should be contacted and will undertake this check.

It is important to remember that LPA's do not have the right to consent to or refuse treatment in situations where:

- The donor has capacity to make the healthcare decision
- A decision relates to life-sustaining treatment- *UNLESS* the LPA document expressly authorises this.
- The donor is detained under the Mental Health Act (section 28).

Just as advance decisions, LPA's are not entitled to demand specific forms of medical treatment. LPA's should always be making decisions in the person's best interests. If healthcare staff disagree with the LPA then they should discuss the case with other medical experts and/or get a second opinion. If the disagreement cannot be resolved then the healthcare professional can refer the matter to the Court of Protection for review. Whilst the Court of Protection is making its decision, life-sustaining treatment is allowed to prevent the donor's condition worsening.

As above, the LPA attorney must act in the patient's best interests and if there is any doubt, referral to the Court of Protection should be made.

Normally an LPA and an advance decision will be separate documents, although someone may have an LPA which incorporates elements of an advance directive.

If an LPA is written and registered *after* an advance decision, then the advance decision is no longer valid.

5.9. Court of Protection

The court of protection has certain rights with regard to LPA's:

- They can determine their validity
- Give directions about using the LPA
- Remove an attorney appointed in LPA if they feel they are not acting in patient's best interests.

The Court of Protection (through the Office of the Public Guardian) can be contacted by phone to check validity and whether an LPA is registered (please refer to section 9.1 for contact details).

5.10. How to find out about the existence of an Advance Decision

It is primarily the patient's responsibility to ensure that the existence of an advance directive or living will is made known. Recommendations for patient's who wish to produce this kind of document encourage them to make it known to their GP, relatives, friends and also hospital, if appropriate.

Advance decisions should preferably be put in writing (but there is no legal requirement for this) unless it is an advance decision to refuse life-sustaining treatment when it MUST be in writing. This may be in the form of a legal document or it may also be a personal letter. It may be that the person has previously had hospital treatment or is receiving on-going treatment and therefore a copy may already be filed in their hospital notes. If not, the patient themselves may be carrying a copy when they are admitted. Alternatively it

might be something which the relatives hold. When a patient is first admitted, staff may not be immediately aware therefore of its existence. For those patients who have informed the hospital, a note will be made on the patients electronic record, as well as in their hospital notes. The Trust is currently exploring ways that the electronic record can support the details of the document by scanning in the document. Until such time as this is active, e-searcher will provide an alert mechanism for staff by means of a bomb icon on the patient detail screen. All staff should be made aware of the importance of checking this.

5.11. What to do when you know a patient has an Advance Decision

It is important to remember that as soon as you become aware the patient has a **valid** and **applicable** advance decision it is **against the law to ignore it**. It is vital that the patient's wishes are taken into consideration, especially if they are not able to communicate on the day of their admission/attendance at hospital.

Where possible, the validity of the advance decision should be checked with the patient/next of kin, other relative, GP or other patient advocate/representative. However, the patient should still be treated according to their stated wishes, until this can be established. (See Emergency Situations below).

If you are the first person to be made aware of its existence you should inform the Consultant in charge of the patient, Heads of Nursing, Supervisor of Midwives, or AHP manager (Depending on clinical area) and the Legal Department (during office hours 09:00-17:00).

If a patient declares their wishes as to whether resuscitation attempts should be made in the event of their suffering a cardiorespiratory arrest in hospital, please refer to the DNAR (do not resuscitate) policy. The resuscitation department must be notified of a DNAR order by following the instructions on the DNAR form.

If the advance decision is available, a copy should be filed securely in the patient's notes. In addition to this, its existence should be clearly documented on the patient's care plan.

5.12. Validity and Applicability

Patients who have already made known to the Trust the existence of an advance decision are encouraged to review this annually and ensure that the legal department of the Trust are provided with an up to date copy of this. However, there may be cases in which the advance decision was drawn up some time ago. It is important to remember that it remains applicable unless specifically revoked by the patient.

In order to be binding, an advance decision must be valid and applicable:

Validity

To be valid an advance decision must be:

- Made by someone with the necessary *capacity*
- *Applicable* to the circumstances that arise (see below)
- *Understood* by the patient, who has fully appreciated the significance of their refusal of such treatment
- Made *without* duress

- To apply to life-sustaining treatment it must meet the requirements set out in section 5.2

Essentially you are obliged to try to find out if the person has done anything that clearly goes against their advance decision, has at some time withdrawn their decision, has subsequently conferred the power to make that decision to an attorney (via LPA) or would have changed their decision if they had known more about the current circumstances. Points to consider are:

- How long ago the advance decision was made?
- Have there been any changes to the patient's personal life since they made the decision that might affect its validity?
- Have there been any developments in medical treatment that the patient did not foresee when writing their advance decision (new medications, treatments, therapies)?

If you have any doubts about any of the above, then steps should be taken to confirm the validity. Often the patient's relatives, friends and general practitioner are of assistance with this. Advice can be sought from the legal department at the Trust.

Applicability

To be applicable an advance decision must apply to the situation in question and apply to the treatment that it is to be proposed.
Healthcare professionals must first determine:

- That the person has lost capacity
- The patient is now in the current situation set out in the advance decision
- The proposed treatment is the treatment specified in the advance decision

In addition to the above, remember also that patients may well have produced advance decisions and advance decisions to refuse life-sustaining treatment *before* the introduction of the Mental Capacity Act (i.e. prior to October 2007). Advance decisions made before the act may still be valid and applicable.

Following the above guidance, if the healthcare professional is still not satisfied about the validity, treatment can be provided without incurring liability.

Professionals can give or continue treatment while they resolve doubts over an advance decision. The Court of Protection can settle disagreements about the existence, validity or applicability of an advance decision. Section 26 of the Act allows healthcare professionals to give necessary treatment, including life-sustaining treatment, to stop a person's condition getting seriously worse while the court decides.

5.13. Legal Issues

Healthcare professionals *must* follow an advance decision if it is valid and applicable to the particular circumstances. If they do not, they could face either criminal prosecution (could be charged with committing a crime) and also face civil liability (somebody could sue them).

Healthcare professionals are protected from liability if they are:

- Not aware of an advance decision
- Not satisfied that an advance decision exists
- Not satisfied that it is valid and applicable to the particular treatment and the current circumstances

5.14. Emergency Situations

A healthcare professional must provide treatment in the patient's best interests, unless they are satisfied that there is an advance decision that is both valid and applicable in the circumstances.

Healthcare professionals should not delay emergency treatment to look for an advance decision if there is no clear indication that one exists. But if it is clear that a person has made an advance decision that is likely to be relevant, healthcare professionals should assess its validity and applicability as soon as possible. Sometimes the urgency of treatment will make this difficult.

As a healthcare professional, you will be protected from liability if you:

- Stop or withhold treatment because you reasonably believe that an advance decision exists and that it is valid and applicable. You must be able to demonstrate that your belief was reasonable from the evidence that was available at the time you considered the advance decision.
- Treat a person because, you are not aware an advance decision (having taken practical and appropriate steps to find out if a person has made an advance decision to refuse treatment)
- Treat a person because you have genuine doubts about the existence, validity or applicability of an advance decision.

5.15. Other Issues

5.15.1. Conscientious Objection

All staff are personally accountable for their practice. If staff find themselves caring for a patient with an advance decision which contains specific instructions regarding the withholding or withdrawal of treatment, and they have a conscientious objection to this, they should communicate this to their line manager/senior clinician. Managers may try to accommodate these objections, but they have no obligation to do so. The overriding duty is to the patient and their wishes.

In cases where the patient now lacks capacity but has made a valid and applicable advance decision to refuse treatment, which a doctor or health professional cannot, for reasons of conscience, comply with and arrangements cannot be made for the patient's care to be transferred, the Court of Protection will become involved and can direct those responsible for the patient's care.

5.15.2. Pregnancy

If a pregnant woman who lacks mental capacity presents with an apparently valid advance statement refusing treatment, legal advice should be sought.

5.15.3. Disagreement about an Advance Decision

It is the responsibility of the healthcare professional who is in charge of the person's care at the time of the proposed treatment to decide whether there is an advance

decision which is valid and applicable in the circumstances. In the event of a disagreement about an advanced decision, either between healthcare professionals or between healthcare professionals and family members, the clinician in charge should review all the available evidence. All staff involved in the patient's care should be consulted about their views. In addition, the clinician in charge of that patient may wish to contact the legal department for advice.

If there is disagreement between the healthcare professional and a nominated lasting power of attorney (LPA) then the healthcare professional can, if necessary, refer to the Court of Protection to intervene.

If such a situation arises, please contact the Trust's Legal Department for advice.

6. Equality and Human Rights Statement

An EHRA has been completed on the original document, there have been no major alterations to this document

7. Training

See the Mental Capacity Act Policy which contains information about training

8. Monitoring Compliance with the Document

If a patient is known to have an advance decision every effort should be made to ensure a copy of this is available and clearly marked in the patient's health record, as soon as possible.

Any discussions which occur relating to the advance decision and treatment/non-treatment associated with this should be clearly documented in the patient's health record

Monitoring Table

Element to be Monitored	Lead	Tool for Monitoring	Frequency	Responsible Individual/Group/ Committee for review of results/report	Responsible individual/ group/ committee for acting on recommendations/action plan	Responsible individual/group/ committee for ensuring action plan/lessons learnt are Implemented
Incidents relating to MCA/consent	Chair of Consent Steering Group	Datix reports	quarterly	Consent Steering Group	Divisional Leads and clinical units	Consent Steering Group
Mental capacity is recorded in health record	Medical Director and Nurse Director	Health records audit- 1 question	annual	Consent Steering Group	Divisional Leads and clinical units	Consent Steering Group

9. References

- British Medical Association. Advance Statements about medical treatment. London. BMA 1995
- Mental Capacity Act (2005)
- General Medical Council. Seeking patient's consent: the ethical considerations. London GMC, 1999.
- Re T (1992) 3 Med LR 306
- Gillick V West Norfolk and Wisbech Health Authority (1985) 3 All ER 402
- Human Rights Act 1998
- Nursing and Midwifery Council. Professional Advisory Services 2004
- Mental Health Act Code of Practice. HMSO. August 1993

9.1. Contacting Office of Public Guardian

Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH

www.publicguardian.gov.uk

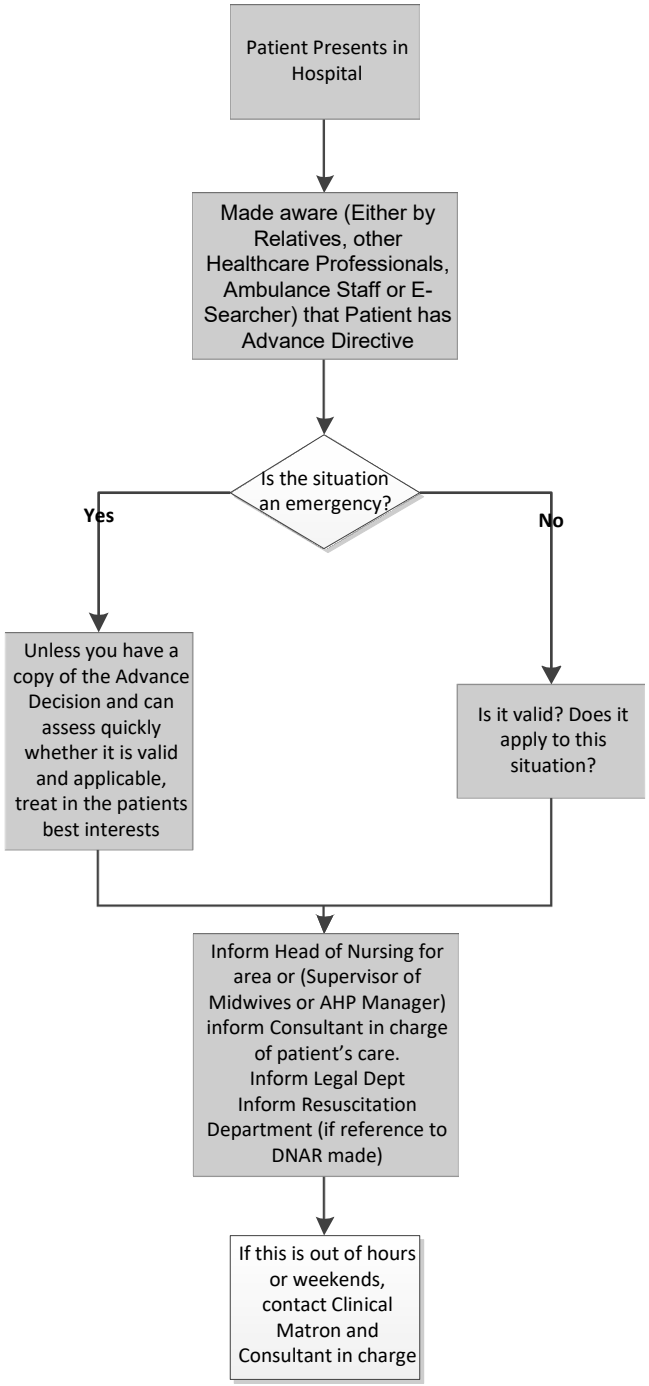
Phone Number: 0300 456 0300
Fax Number: 0870 739 5780

9.2. Useful Organisations

Information on Advance Directives can be found from the following organisations, many of whom produce free information leaflets for patients.

- Age Concern: Telephone 0800 055 6112
  www.ageconcern.org.uk
- Alzheimer's Society- Telephone 0333 150 3456
  www.alzheimers.org.uk
- Patients Association – Telephone 0800 345 7115
  www.patients-association.org.uk
- Mind: Telephone 0300 123 3393
  www.mind.org.uk
- Mental Health Foundation: Telephone 020 7802 0300
  www.mentalhealth.org.uk
- Terrence Higgins Trust: Telephone 0808 802 1221
  www.tht.org.uk

Appendix A: Organisational Flowchart – Quick Guide to follow if you find Patient has an Advance Directive



Appendix B: Staff Feedback Form

Please complete this form if you would like to make a comment on the procedural document you have just read. Your feedback will be held by the Assurance Manager and your views will be taken into account at the next review date of the document.

Title of the procedural document:	
Date of next review:	
Your name (optional):	
Date today:	
Your comments:	

Thank-you for your feedback

Please forward this form to: **Assurance Manager (NHSLA)**

Appendix C: EIA form

Please refer to the accompanying guidance document when completing this form.

Strategy, policy or service name	Policy for Advanced Decisions
Date of completion	October 2023
Name of the person(s) completing this form	Simon Walton
Brief description of the aims of the Strategy/ Policy/ Service	Click here to enter text.
Which Department owns the strategy/ policy/ function	Company Secretary
Version number	V2
Pre Equality analysis considerations	Click here to enter text.
Who will be affected by this work? **E.g. staff, patients, service users, partner organisations etc.**	patients
Review date	Click here to enter text.
If negative impacts have been identified that you need support mitigating please escalate to the appropriate leader in your directorate and contact the EDHR team for further discussion.	To whom has this been escalated? Name: Click here to enter text. Date: Click here to enter a date.
Have you sent the final copy to the EDHR Team?	Choose an item.

2. EIA Analysis

<table>
<tr><td></td><td>☺ 😐 ☹</td><td>Evidence:</td></tr>
<tr><td>Will the proposal impact the safety of patients', carers' visitors and/or staff?

Safe: Protected from abuse and avoidable harm.</td><td>Choose:
Positive
Neutral
Negative</td><td>Click here to enter text.</td></tr>
<tr><td>Equality Consideration
Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)</td><td></td><td>
<table>
<tr><td>Race</td><td>Gender</td><td>Sexual orientation</td><td>Age</td><td>Disability & carers</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
<tr><td>Gender reassignment</td><td>Marriage & Civil Partnership</td><td>Religion and faith</td><td>Maternity & Pregnancy</td><td>Social economic</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
</table>
</td></tr>
<tr><td>Is the proposal of change effective?

Effective: Peoples care, treatment and support achieves good outcomes, That staff are enabled to work in an inclusive environment. That the changes are made on the best available evidence for all involved with due regards across all 9 protected Characteristics</td><td>Choose:
Positive
Neutral
Negative</td><td>Click here to enter text.</td></tr>
</table>

<table>
<tr><td>Equality Consideration
Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)</td><td></td><td>
<table>
<tr><td>Race</td><td>Gender</td><td>Sexual orientation</td><td>Age</td><td>Disability & carers</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
<tr><td>Gender reassignment</td><td>Marriage & Civil Partnership</td><td>Religion and faith</td><td>Maternity & Pregnancy</td><td>Social economic</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
</table>
</td></tr>
<tr><td>What impact will this have on people receiving a positive experience of care?</td><td>Choose:
Positive
Neutral
Negative</td><td>Click here to enter text.</td></tr>
<tr><td>Equality Consideration
Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)</td><td></td><td>
<table>
<tr><td>Race</td><td>Gender</td><td>Sexual orientation</td><td>Age</td><td>Disability & carers</td></tr>
<tr><td>☒</td><td>☒</td><td>☒</td><td>☒</td><td>☒</td></tr>
<tr><td>Gender reassignment</td><td>Marriage & Civil Partnership</td><td>Religion and faith</td><td>Maternity & Pregnancy</td><td>Social economic</td></tr>
<tr><td>☒</td><td>☒</td><td>☒</td><td>☒</td><td>☒</td></tr>
</table>
</td></tr>
<tr><td>Does the proposal impact on the responsiveness to people's needs?</td><td>Choose:
Positive
Neutral
Negative</td><td></td></tr>
<tr><td>Equality Consideration
Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)</td><td></td><td>
<table>
<tr><td>Race</td><td>Gender</td><td>Sexual orientation</td><td>Age</td><td>Disability & carers</td></tr>
<tr><td>☒</td><td>☒</td><td>☒</td><td>☒</td><td>☒</td></tr>
<tr><td>Gender reassignment</td><td>Marriage & Civil Partnership</td><td>Religion and faith</td><td>Maternity & Pregnancy</td><td>Social economic</td></tr>
<tr><td>☒</td><td>☒</td><td>☒</td><td>☒</td><td>☒</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><td>What considerations have been put in place to consider the organisations approach on improving equality and diversity in the workforce and leadership?</td><td>Choose:
Positive
Neutral
Negative</td><td>Click here to enter text.</td></tr>
<tr><td>Equality Consideration
Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)</td><td></td><td>
<table>
<tr><td>Race</td><td>Gender</td><td>Sexual orientation</td><td>Age</td><td>Disability & carers</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
<tr><td>Gender reassignment</td><td>Marriage & Civil Partnership</td><td>Religion and faith</td><td>Maternity & Pregnancy</td><td>Social economic</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
</table>
</td></tr>
<tr><td colspan="3">Access
Could the proposal impact positively or negatively on any of the following:</td></tr>
<tr><td>• Patient Choice</td><td>Choose:
Positive
Neutral
Negative</td><td></td></tr>
<tr><td>• Access</td><td>Choose:
Positive
Neutral
Negative</td><td></td></tr>
<tr><td>• Integration</td><td>Choose:
Positive
Neutral
Negative</td><td></td></tr>
</table>

<table>
<tr><td>Equality Consideration
Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)</td><td></td><td>
<table>
<tr><td>Race</td><td>Gender</td><td>Sexual orientation</td><td>Age</td><td>Disability & carers</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
<tr><td>Gender reassignment</td><td>Marriage & Civil Partnership</td><td>Religion and faith</td><td>Maternity & Pregnancy</td><td>Social economic</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
</table>
</td></tr>
<tr><td>Engagement and Involvement
How have you made sure that the views of stakeholders, including people likely to face exclusion have been influential in the development of the strategy / policy / service:</td><td>Choose:
Positive
Neutral
Negative</td><td></td></tr>
<tr><td>Equality Consideration
Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)</td><td></td><td>
<table>
<tr><td>Race</td><td>Gender</td><td>Sexual orientation</td><td>Age</td><td>Disability & carers</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
<tr><td>Gender reassignment</td><td>Marriage & Civil Partnership</td><td>Religion and faith</td><td>Maternity & Pregnancy</td><td>Social economic</td></tr>
<tr><td>☐</td><td>☐</td><td>☐</td><td>☐</td><td>☐</td></tr>
</table>
</td></tr>
<tr><td>Duty of Equality
Use the space below to provide more detail where you have identified how your proposal of change will impact.</td><td>Choose:
Positive
Neutral
Negative</td><td></td></tr>
<tr><td>Characteristic</td><td>Rating
☺ ☹ 😐</td><td>Description</td></tr>
<tr><td>Race</td><td>Choose:
Positive
Neutral
Negative</td><td></td></tr>
</table>

Age	Choose: Positive Neutral Negative	
Disability and Carers	Choose: Positive Neutral Negative	
Religion or belief	Choose: Positive Neutral Negative	
Sex	Choose: Positive Neutral Negative	
Sexual orientation	Choose: Positive Neutral Negative	
Gender re-assignment	Choose: Positive Neutral Negative	
Pregnancy and maternity	Choose: Positive Neutral Negative	

Marriage and civil partnership	Choose: Positive Neutral Negative	

Human Rights

Please look at the table below to consider if your proposal of change may potentially conflict with the Human Right Act 1998

Articles		Y/N
A2	Right to life	**Y/N**
A3	Prohibition of torture, inhuman or degrading treatment	**Y/N**
A4	Prohibition of slavery and forced labour	**Y/N**
A5	Right to liberty and security	**Y/N**
A6 &7	Rights to a fair trial; and no punishment without law	**Y/N**
A8	Right to respect for private and family life, home and correspondence	**Y/N**
A9	Freedom of thought, conscience and religion	**Y/N**
A10	Freedom of expression	**Y/N**
A11	Freedom of assembly and association	**Y/N**
A12	Right to marry and found a family	**Y/N**
Protocols		
P1.A1	Protection of property	**Y/N**
P1.A2	Right to education	**Y/N**
P1.A3	Right to free elections	**Y/N**